

Gregory B. Thomas (SBN 239870)
E-mail: gthomas@bwslaw.com
Temitayo O. Peters (SBN 309913)
E-mail: tpeters@bwslaw.com
Jasper L. Hall (SBN 341113)
E-mail: jhall@bwslaw.com
BURKE, WILLIAMS & SORESENSEN, LLP
1999 Harrison Street, Suite 1650
Oakland, California 94612-3520
Tel: 510.273.8780 Fax: 510.839.9104

Attorneys for Defendants ALAMEDA COUNTY
SHERIFF'S OFFICE, ALAMEDA COUNTY,
DEPUTY JOE, and DEPUTY IGNONT
(collectively "ALAMEDA COUNTY
DEFENDANTS")

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

ALAMEDA COUNTY MALE PRISONERS
And Former Prisoners, DANIEL
GONZALEZ, et al. on behalf of themselves
and others similarly situated, as a Class, and
Subclass;

ALAMEDA COUNTY FEMALE
PRISONERS And Former Prisoners, JACLYN
MOHRBACHER, ERIN ELLIS,
DOMINIQUE JACKSON, CHRISTINA
ZEPEDA, ALEXIS WAH, AND KELSEY
ERWIN, et al on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

ALAMEDA COUNTY SHERIFF'S OFFICE,
ALAMEDA COUNTY, Deputy Joe, Deputy
Ignont (sp) John and Jane ROEs, Nos. 1 – 25,

Defendants.

Case No. 3:19-cv-07423-JSC

**ALAMEDA COUNTY DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
ADMINISTRATIVE MOTION FOR
CLARIFICATION OF THIS COURT'S
ORDER RE CERTIFICATION OF A
RULE 23(B)(6) CLASS (ECF 312)**

Filed concurrently with [Proposed] Order

Judge: District Judge Jacqueline Scott
Corley

Trial Date: May 6, 2024

1 In accordance with Northern District of California Local Rule 7-11(b), Defendants
 2 COUNTY OF ALAMEDA, ALAMEDA COUNTY SHERIFF'S OFFICE, DEPUTY JOE, and
 3 DEPUTY IGNONT (collectively, "Alameda County Defendants") respectfully submit this
 4 opposition to "Plaintiffs' Administrative Motion for Clarification of This Court's Order Re:
 5 Certification of a Rule 23(B)(2) Class (ECF 312)" (Administrative Motion).

6 **PERTINENT FACTS**

7 The operative Fifth Amended Complaint was filed on April 20, 2022. Dkt. No. 180. Of
 8 the fifteen originally named Plaintiffs, only two – Tikisha Upshaw and Tiara Arnold – are female.
 9 *Id.* at ¶¶ 14.3.8, 14.3.15. Ms. Arnold, who did not assert any inadequate sanitation claims in the
 10 operative complaint, was dismissed by this Court on November 7, 2022. Dkt. No. 216, pp. 5-6.
 11 *See also* Dkt. No. 180 ¶ 14.3.15. Plaintiff Upshaw, the only remaining female inmate in this
 12 lawsuit, is also not asserting any inadequate sanitation claims in this lawsuit. Dkt. No. 180 ¶
 13 14.3.8.

14 On May 9, 2023, the Court conditionally certified an inadequate sanitation subclass
 15 comprised of all male inmates. Dkt. No. 264. In so doing, the Court construed Plaintiffs' class
 16 certification request as applicable only to male inmates because "*Plaintiffs do not have a female*
 17 *class representative* (emphasis added)." *Id.* at 3:11-12. The Court's recent order officially
 18 certifying Plaintiffs' inadequate sanitation class reiterates that the inadequate sanitation class
 19 certified under Federal Rule of Civil Procedure 23(b)(2) in this action is limited to "male inmates
 20 detainees who are now, or will in the future be" subjected to the two alleged sanitation policies
 21 stated in the order. Dkt. No. 312 at 1. On September 22, 2023, Plaintiffs filed the subject
 22 Administration Motion seeking to expand the certified inadequate sanitation class in this action to
 23 include female inmates.

24 **ARGUMENT**

25 Plaintiffs' Administrative Motion should be denied for several reasons. First, Plaintiffs'
 26 Administrative Motion should be denied because the requirements of Federal Rule of Civil
 27 Procedure 23 (Rule 23) have not been met as it pertains to an inadequate sanitation class
 28 comprised of female inmates. *See generally* Dkt. No. 180. The only remaining named female

1 inmate in this lawsuit is not asserting any sanitation claims. As a result, she cannot act as a female
 2 class representative for the inadequate sanitation class. Dkt. No. 264 at 3:11-12. *See also, e.g.*
 3 Fed. R. Civ. P. 23(a)(4) (certification only appropriate if “the representative parties will fairly and
 4 adequately protect the interests of the class”).

5 The male class representatives also cannot act as class representatives for an inadequate
 6 sanitation class comprised of female inmates. As the Court already found, Plaintiffs “do not
 7 dispute that female inmates are housed in separate areas from male inmates.” Dkt. No. 264 at
 8 3:13-14. There is no evidence that the male class representatives’, who are indisputably housed
 9 separately from the female inmates, claims are “common” or “typical of the claims” of female
 10 inmates. Fed. R. Civ. P. 23(a)(2)-(3). There is also no evidence that female inmates experience
 11 the same sanitation challenges alleged by the male inadequate sanitation class representatives in
 12 this lawsuit, which the Alameda County Defendants dispute. Plaintiffs’ belated and unsupported
 13 attempt to argue that female inmates are subjected to the same alleged policies neither changes
 14 these facts nor justifies modifying the scope of the certified class. *See generally* Dkt. No. 319-1.

15 Second, Plaintiffs’ attempt to rely on a two-sentence order issued by Judge James Donato
 16 in *Jaclyn Mohrbacher, et al. v. Alameda County Sheriff’s Office* (Case No. 3:18-cv-0050-JD) to
 17 support their motion is puzzling and unavailing. The Court already determined that this lawsuit is
 18 not related to the *Mohrbacher* lawsuit. *See* Dkt. No. 14 (rejecting request to relate this matter to
 19 *Mohrbacher*). Moreover, nothing in the order can be interpreted to relate to class certification in
 20 this matter or to provide evidence establishing that the requirements of Rule 23 have been met as
 21 applied to Plaintiffs’ proposed female class. *See generally* Fed. R. Civ. P. 23. Finally, even if the
 22 *Mohrbacher* order did somehow relate to class certification in this case, it was not referenced in
 23 Plaintiffs’ Motion for Class Certification, nor anywhere in the supporting documentation, and
 24 therefore should not be considered at this late hour. *See generally* Dkt. No. 225, 263.

25 ///

26 ///

27 ///

28 ///

CONCLUSION

Accordingly, the Alameda County Defendants respectfully request that the Court deny Plaintiffs' Administrative Motion and continue defining the certified inadequate sanitation class as set forth in Dkt. No. 312.

Dated: September 26, 2023

BURKE, WILLIAMS & SORESENSEN, LLP

By: /s/ Temitayo O. Peters
Gregory B. Thomas
Temitayo O. Peters
Jasper L. Hall
Attorneys for Defendants ALAMEDA
COUNTY SHERIFF'S OFFICE,
ALAMEDA COUNTY, DEPUTY JOE, and
DEPUTY IGNONT